

# **Federal Land Transaction Facilitation Act: Operation and Issues for Congress**

Updated December 10, 2012

**Congressional Research Service**

<https://crsreports.congress.gov>

R41863

## Summary

The Federal Land Transaction Facilitation Act (FLTFA), which expired on July 25, 2011, provided for the sale or exchange of lands owned by the Bureau of Land Management (BLM) that have been identified for disposal under BLM's land use plans. Most of the proceeds were to be used for land acquisition. The law's goals included allowing for reconfiguration of land ownership patterns to better facilitate resource management, improving administrative efficiency, and increasing the effectiveness of the allocation of fiscal and human resources.

The authority to sell or exchange BLM lands under FLTFA was initially authorized for 10 years, expiring on July 25, 2010. When it expired, an estimated \$52 million in the account ceased to be available for purposes of the law. These funds have not been reinstated in the FLTFA account. On July 29, 2010, the authority was subsequently extended for one year, expiring on July 25, 2011. Upon expiration, there was \$2 million in the FLTFA account, which also ceased to be available.

An issue for Congress is whether to reauthorize the FLTFA authority and, if so, in what form. One question is the extent to which there is a need for this authority, given other laws authorizing the sale and acquisition of federal land and other sources of funding for these purposes. A second question is whether any extension of FLTFA should be relatively short (e.g., one year) or relatively long (e.g., 10 years or more). A third question is whether to continue to require land use plans as of July 25, 2000, to be used as the basis of land sales, or to allow updated plans to be used. A fourth set of questions relates to the retention and use of proceeds, including the extent to which any future proceeds should be retained by the agencies, used exclusively for land sales and acquisitions, and used primarily in the state in which they were generated, and whether the previously generated funds should be returned to the FLTFA fund.

The Obama Administration has proposed making FLTFA permanent, and using current land management plans for determining which lands to sell or exchange. S. 3525, S. 714, and H.R. 3365 would extend the law for varying numbers of years. In other respects they are similar, for instance, in allowing BLM to use updated land management plans to sell and exchange land.

Proceeds from the sale or exchange of BLM lands under FLTFA were split between the state in which the lands were disposed of (4%) and a separate Treasury account (96%). No more than 20% of the funds in the account could be used for administrative expenses. While BLM alone disposed of land, not less than 80% of the funds in the account were used by the four major federal land management agencies to acquire lands. In addition to BLM, these agencies were the Fish and Wildlife Service, National Park Service, and Forest Service. The agencies could acquire inholdings and other non-federal lands (or interests therein) that are adjacent to federal lands and contain exceptional resources. Of the funds for acquisition, at least 80% were to be used in the state in which the funds were generated; remaining funds could be used in any state. Further, not less than 80% of the funds for land purchases within a state were for acquisition of inholdings.

From the enactment of FLTFA through FY2010, a total of \$115.7 million was raised through the sale or exchange of BLM lands, and 25,967 acres were sold. Disposal of land under FLTFA was concentrated in Nevada and Oregon, with most of the revenues (76%) being generated in Nevada. Over the same period, about \$63.7 million in funding was disbursed, of which \$49.2 million was spent on the purchase of 18,135 acres (together with \$9.7 million in other funds). The acquisition of lands and expenditures on acquisitions were less concentrated in particular states than land sales and receipts.

## Contents

Background .....	1
Overview of FLTFA Authority .....	2
Land Sales .....	2
Land Acquisitions.....	3
Program Termination.....	4
Implementation of FLTFA.....	5
Acreage Sold and Revenues from Land Sales .....	6
Acreage Acquired and Expenditures on Acquisitions .....	8
Acreage Sold and Acquired, and Receipts and Expenditures, by State .....	9
Administrative and Legislative Action .....	11
Issues .....	12
Need for FLTFA .....	12
Length of Extension .....	14
Land Use Plans.....	14
Retention and Allocation of Proceeds .....	15

## Figures

Figure 1. Illustration of Expenditure of FLTFA Receipts .....	2
Figure 2. Comparison of Acres Sold and Acquired Under FLTFA, by State, FY2000-FY2010 .....	10
Figure 3. Comparison of Receipts and Expenditures Under FLTFA, by State, FY2000-FY2010 .....	10

## Tables

Table 1. Land Sales Under FLTFA, FY2000-FY2010.....	6
Table 2. Land Acquisitions Under FLTFA, FY2000-FY2010 .....	8

## Contacts

Author Information.....	16
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## Background

Historically, proceeds from the sale of lands managed by the Bureau of Land Management (BLM) under various laws were deposited in the general fund of the Treasury. However, certain laws have provided for the proceeds of land sales to be deposited in separate Treasury accounts, with funds available to agencies for subsequent land acquisition and other purposes. The Federal Land Transaction Facilitation Act (FLTFA, 43 U.S.C. §2301), which expired on July 25, 2011, was one such law.

The law's purposes included allowing for the reconfiguration of land ownership patterns to better facilitate resource management, improving administrative efficiency, and increasing the effectiveness of the allocation of fiscal and human resources. FLTFA provided for the sale or exchange of land identified for disposal under BLM's land use plans "as in effect on July 25, 2000"—the date of enactment. Most BLM lands (except some lands in Alaska) are covered by a land use plan. Most of the proceeds were to be used for land acquisition, as described below.

Proceeds from the sale or exchange of BLM lands under FLTFA were split between the state in which the lands were disposed of (4%) and a separate Treasury account (96%), called the Federal Land Disposal Account. Funds in this account, often called the FLTFA account, were available without further appropriation.

The authority to sell or exchange BLM lands under FLTFA briefly expired on July 25, 2010—10 years after enactment. On July 29, 2010, it was subsequently extended for one year.<sup>1</sup> An issue for Congress is whether to reauthorize this authority and, if so, in what form. The 112<sup>th</sup> Congress has considered related legislation. (See "Administrative and Legislative Action" below.) The funds in the Treasury account when FLTFA initially expired, an estimated \$52 million, ceased to be available under the law. An estimated \$2 million in the account at the end of the one-year extension (July 25, 2011) also has ceased to be available.

The funds in the FLTFA account were available to both the Secretary of the Interior and the Secretary of Agriculture to acquire inholdings<sup>2</sup> and other non-federal lands (or interests therein)<sup>3</sup> that are adjacent to federal lands and contain exceptional resources, with no more than 20% for BLM's administrative expenses to carry out the land disposal program. Of the funds for acquisitions, at least 80% were to be used in the state in which the funds were generated, and the remaining funds could be used in any state. Further, not less than 80% of the funds for land purchases within a state were to be used to acquire inholdings. **Figure 1** illustrates how \$1.0 million in receipts from the sale or exchange of land under FLTFA was to be disposed of, in accordance with the percentage categories in the law.

From the enactment of FLTFA through FY2010, a total of \$115.7 million was raised through the sale or exchange of BLM lands, and 25,967 acres were sold. Over the same period, about \$63.7 million in funding was disbursed, with \$49.2 million spent on the purchase of 18,135 acres.<sup>4</sup>

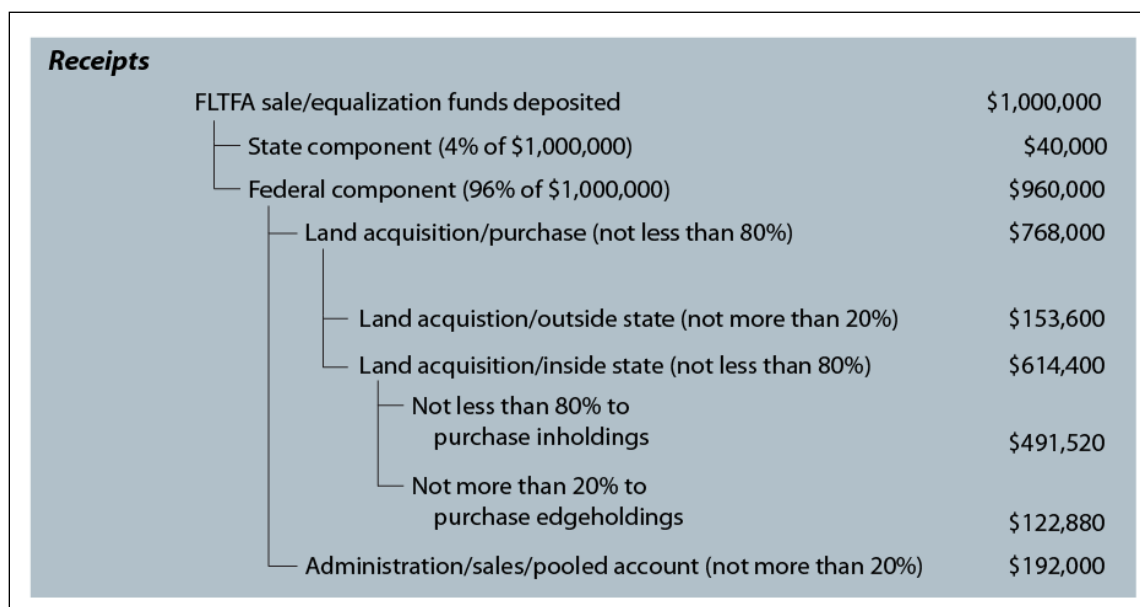
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<sup>1</sup> §3007(a), P.L. 111-212.

<sup>2</sup> FLTFA defined "inholding" as "any right, title, or interest, held by a non-Federal entity, in or to a tract of land that lies within the boundary of a federally designated area." 43 U.S.C. §2302(3).

<sup>3</sup> While "interest" was not defined in FLTFA, it generally referred to something less than full ownership, such as mineral rights or a conservation easement.

<sup>4</sup> Additional non-FLTFA funding also was used to purchase this land, as explained below.

**Figure 1. Illustration of Expenditure of FLTFA Receipts**

**Source:** Created by CRS using BLM graphic.

The balance of this report is organized into four sections. First, “Overview of FLTFA Authority” describes FLTFA’s provisions on selling and acquiring land, and provides a summary of the program’s termination. Second, “Implementation of FLTFA” presents an overview of how the land sale and acquisition authorities were used over the past decade, including the acreage of land sold and acquired and the amount of money collected and spent, both nationally and in particular states. Third, “Administrative and Legislative Action” outlines President Obama’s proposal to amend FLTFA and make it permanent, and 112<sup>th</sup> and 111<sup>th</sup> Congress measures to extend and amend FLTFA. Fourth, the “Issues” section discusses several issues related to whether to extend or make FLTFA permanent that have been of focus, including the need for FLTFA, length of any extension, currency of land use plans, and retention and use of proceeds.

## Overview of FLTFA Authority

### Land Sales

BLM is authorized to sell tracts of land that meet specific criteria under the Federal Land Policy and Management Act of 1976 (FLPMA).<sup>5</sup> These criteria include that the land is difficult and uneconomic to manage, is no longer required for a federal purpose, and will serve important public objectives if disposed of. These tracts are identified through BLM’s land use planning process, and then reflected in the land use plans that govern management of BLM lands.

FLTFA required the Secretary of the Interior to establish a program for the sale or exchange<sup>6</sup> of land identified for disposal under BLM’s approved land use plans. Eligible lands were those identified for potential disposal in the land management plans that were in effect at the time

<sup>5</sup> 43 U.S.C. §§1701 et seq. The sale provisions are at 43 U.S.C. §1713(a) and implementing regulations are at 43 C.F.R. 2710-2711.

<sup>6</sup> In general, as used hereinafter in this report, “land sales” encompasses both the sale and exchange of BLM lands identified for disposal.

FLTFA was enacted—July 25, 2000. Public lands identified for disposal after July 25, 2000, in a land management plan, could still be considered for sale or exchange. However, the proceeds of any such disposal would not be deposited into the account established under FLTFA.

There was no regular schedule for sale of lands under FLTFA. In deciding which lands to offer for sale, BLM might have been responding to expressions of interest from individuals or local governments or activities in the local real estate market. The size and configuration of parcels offered for sale were determined by various factors, including the land ownership in the area, marketability of the land, and cost of processing the sale.

Lands selected for sale were subject to laws, regulations, and processes governing BLM land sales generally, such as those requiring an appraisal of the value of the land. BLM lands cannot be sold for less than fair market value, determined by an appraisal approved by the Department of the Interior's Appraisal Services Directorate. In most cases, lands will be sold through competitive bidding.<sup>7</sup> Other provisions of law require environmental studies of lands proposed for sale. These studies could cover a variety of issues, such as air quality, cultural resources, hazardous materials, minerals, recreation, wildlife, vegetation, and wetlands/riparian areas. Still other provisions of law provide that the public must be made aware of the proposed land sale, and be given an opportunity to comment on that proposal. The time to complete a land sale varies depending on the complexity of the issues that must be addressed, but can be a year or longer.

## Land Acquisitions

The law provided for the revenue in the FLTFA account in the Treasury to be used for certain administrative expenses and land acquisitions. No more than 20% of the amount in the FLTFA account could be used to reimburse administrative and other expenses incurred by the BLM in carrying out the land disposal program under FLTFA.

Not less than 80% of the money in the FLTFA account was to be used to acquire lands or interests<sup>8</sup> therein that were otherwise authorized by law to be acquired. While BLM alone disposed of land under FLTFA, the four major federal land management agencies could acquire lands with the proceeds. In addition to the BLM, these agencies were the Fish and Wildlife Service (FWS) and the National Park Service (NPS), within the Department of the Interior, and the Forest Service (FS), within the Department of Agriculture.

Under FLTFA, the Secretary of the Interior and the Secretary of Agriculture were authorized to acquire inholdings within the boundaries of certain federally designated areas, or lands adjacent to such federally designated areas that contain exceptional resources. As defined in the law, federally designated areas included units of the National Park System, managed by the National Park Service; units of the National Wildlife Refuge System, managed by the Fish and Wildlife Service; and areas within wilderness, wilderness study areas, the Wild and Scenic Rivers System, and the National Trails System. The term included areas within the National Forest System, managed by the Forest Service, that have been designated by Congress for special management, as well as certain areas managed by BLM, including national monuments, national conservation areas, and areas of critical environmental concern.<sup>9</sup> The law defined *exceptional resource* as “a

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<sup>7</sup> The Secretary of the Interior may provide for sales with modified competitive bidding or without competitive bidding where necessary. Under these types of sales, BLM limits or specifies who can bid on a parcel.

<sup>8</sup> In general, as used hereinafter in this report, “land acquisition” encompasses the acquisition of both land and interests in land.

<sup>9</sup> The law applied to the federally designated areas that existed on July 25, 2000.

resource of scientific, natural, historic, cultural, or recreational value that has been documented by a Federal, State, or local governmental authority, and for which there is a compelling need for conservation and protection under the jurisdiction of a Federal agency in order to maintain the resource for the benefit of the public.”<sup>10</sup>

Of the funding allocated for acquisitions, FLTFA provided that not less than 80% must be spent in the state where the funds were generated. Thus, up to 20% could be used for acquisitions in any state. Of the funding for acquisitions within a state, not less than 80% was to be used to acquire inholdings. Thus, up to 20% could be used to acquire adjacent lands (known as edgeholdings) that contain exceptional resources. In focusing on acquisition of inholdings, FLTFA noted that the existence of inholdings often caused problems for the land management agencies, that many private landowners within the boundaries of federal land units desired to sell their land to the federal government, and that acquisition of inholdings would be mutually beneficial to both the federal government and private landowners in many cases.<sup>11</sup>

The acquisition of land under FLTFA was governed by authorities pertaining to acquisitions generally, as well as by FLTFA itself, a memorandum of understanding (MOU) among the four agencies, and related state-specific guidance.<sup>12</sup> FLTFA required the Secretary of the Interior and the Secretary of Agriculture to establish a program to identify and prioritize the acquisition of inholdings and lands with exceptional resources. The Secretaries were to consider the extent to which the acquisition of land would facilitate management efficiency, among other criteria. Any land acquired had to be from a willing seller, acquired at a price that was not more than fair market value, and contingent on the conveyance of title acceptable to the Secretary of the Interior or the Secretary of Agriculture. The Secretaries could not acquire land that contained a hazardous substance or other contaminant, or that was difficult or uneconomic to manage based on the land’s location or other characteristics.

The MOU among the four land management agencies for the implementation of FLTFA became effective on May 5, 2003.<sup>13</sup> It provided a targeted allocation of the acquisition funds among the four land management agencies as follows: 60% to BLM, 20% to FS, 10% to FWS, and 10% to NPS. Notwithstanding that allocation, the Secretary of the Interior and the Secretary of Agriculture could mutually agree to allocate funds for a specific acquisition. The MOU also directed the preparation of state-level implementation plans, and each state developed such a plan, according to BLM.

Any of the four participating land management agencies could make recommendations as to lands that should be acquired with the FLTFA funds. However, all four agencies ultimately had to agree on all the expenditures of funds from the account.

## **Program Termination**

Under FLTFA as originally enacted, the authority in the law to sell or exchange BLM lands was to terminate 10 years after the date of enactment, on July 25, 2010. Any money remaining in the account on that date was to become available for appropriation under the Land and Water

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<sup>10</sup> 43 U.S.C. §2302(1).

<sup>11</sup> 43 U.S.C. §2301(7)-(12).

<sup>12</sup> For instance, acquisitions in the State of Utah also were governed by the Utah Interagency Implementation Agreement that was entered into among the regional offices of the four federal agencies.

<sup>13</sup> The memorandum is on the BLM website at [http://www.blm.gov/pgdata/etc/medialib/blm/ut/lands\\_and\\_minerals/lands/fltfa.Par.2919.File.dat/NatlMou.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/ut/lands_and_minerals/lands/fltfa.Par.2919.File.dat/NatlMou.pdf).



Conservation Fund Act (LWCF; 16 U.S.C. §§460/-4 et seq.).<sup>14</sup> FLTFA expired on July 25, 2010. On that date, the monies in the account ceased to be available for FLTFA purposes—acquisition of lands and the administrative costs of BLM land sales. BLM has estimated that nearly \$52 million was in the account on that date.<sup>15</sup>

On July 29, 2010, FLTFA was subsequently extended for one year.<sup>16</sup> During that year, land sales under the law were relatively modest. This was due primarily to a lack of funds for the up-front costs of conducting land sales, according to BLM. Of the \$52 million in the account when it expired, an estimated \$13 million had been anticipated to be used to cover the administrative costs of land sales.<sup>17</sup>

From July 25, 2010, through July 25, 2011, BLM collected \$3.8 million from land sales under FLTFA. These funds were derived primarily from land sales that were nearing completion prior to the initial expiration of FLTFA on July 25, 2010. Approximately \$0.2 million (4%) was to be paid to the states in which the lands were sold, leaving \$3.6 million in the FLTFA fund to administer land sales and acquire additional lands during the year.<sup>18</sup> BLM estimated that approximately \$2 million was in the FLTFA account at the end of the one-year extension, and thus ceased to be available for FLTFA purposes.

## Implementation of FLTFA

From the enactment of FLTFA through FY2010, a total of \$115.7 million was raised through the sale or exchange of BLM lands under the authority. Of this total, BLM collected \$103.2 million from the sale of 25,967 acres, and another \$12.5 million from equalization payments for exchanged lands. Of the total receipts, \$4.6 million (4%) was provided to the states in which the lands were conveyed, and \$111.0 million (96%) was deposited into the FLTFA fund. Of the money in the fund, approximately \$59 million was spent, with \$49.2 million used for acquiring land and an estimated \$10 million for the costs of administering the land sale program, according to BLM. Acquisitions were smaller than sales in terms of acreage and value. Specifically, the agencies acquired a total of 18,135 acres, using \$49.2 million in FLTFA funds and \$9.7 million in other funds, for a total cost of \$58.9 million.<sup>19</sup>

The approximately \$59 million in spending from the FLTFA account represented about half (53%) of the \$111.0 million that was available before the program's initial termination, when the revenues ceased to be available. Several factors accounted for this relatively low level of spending relative to available funding. In a 2008 report, the Government Accountability Office (GAO) identified challenges to completing land acquisitions, including the time, cost, and

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<sup>14</sup> For information on the operation of the Land and Water Conservation Fund, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by Carol Hardy Vincent.

<sup>15</sup> Personal communication with David Beaver, Senior Realty Specialist, BLM, on May 18, 2011.

<sup>16</sup> §3007(a), P.L. 111-212.

<sup>17</sup> Personal communication with David Beaver, Senior Realty Specialist, BLM, on May 18, 2011.

<sup>18</sup> Personal communication with David Beaver, Senior Realty Specialist, BLM, on November 30, 2011.

<sup>19</sup> Sale and acquisition information in this paragraph was obtained from the BLM on May 19, 2011, and reflects activity through September 30, 2010 (FY2010). To purchase lands, \$49.2 million was derived from the FLTFA account and an additional \$9.7 million was derived from other sources. These sources included the Land and Water Conservation Fund, the Migratory Bird Conservation Fund, and donations.



complexity of acquisitions; difficulty in identifying a willing seller; insufficient realty staff to conduct acquisitions; lack of funding for some states; and public opposition to land acquisitions.<sup>20</sup>

Initial expenditures for acquisitions were not made until FY2007, pending the development of interagency agreements and the availability of funding. Specifically, the acquisition of lands under FLTFA was delayed while implementing agreements were being developed among the four participating agencies. In 2003, the agencies issued the national MOU on implementation, which included provisions on how the receipts were to be distributed among the agencies, and by March 2007 all BLM state offices had developed and published state-specific interagency implementation agreements, according to BLM. Also, little funding for land acquisition was available in the earlier part of the decade, because the land sales needed to raise funds for acquisitions began slowly following the enactment of FLTFA. For instance, only \$5.0 million in receipts from sales was generated from FY2000 to FY2003. Receipts from land sales increased dramatically over the next three years, with an additional \$87.4 million in receipts from FY2004 to FY2006. The \$49.2 million in total expenditures occurred between FY2007 and FY2010.

## Acreage Sold and Revenues from Land Sales

Of the \$115.7 million in receipts under FLTFA, 89% was from the sale of land and 11% was from cash equalization payments for exchanged lands. Equalization payments are generally required under law if the values of the BLM and nonfederal lands exchanged are not equal. In this case, the values are to be equalized by the payment of money up to 25% of the value of the federal lands conveyed in the exchange. The parties in the exchange may agree to waive this payment, within limitations, including if it involves not more than 3% of the value of the federal lands or \$15,000.<sup>21</sup> Another way of equalizing value is for either party to add or remove lands.

Sale of land under FLTFA was concentrated in two states. While land was sold in 12 states,<sup>22</sup> sales in Nevada and Oregon accounted for more than three-quarters of the 25,967 total acres sold. Specifically, they accounted for 78% of acres sold (45% and 33%, respectively). Another 7% of the acreage sold was in Idaho, while 4% was in Wyoming and 3% was in New Mexico. The other seven states in which land was sold collectively accounted for 8% of the acreage. (See **Table 1**.)

**Table 1. Land Sales Under FLTFA, FY2000-FY2010**

	BLM Acres Sold	Receipts from BLM Land Sales	Ave. \$ per Acre Sold	Receipts from Cash Equalization Payments	Total Receipts
Alaska <sup>a</sup>	0	\$6,300	n/a	\$0	\$6,300
Arizona	283	\$7,032,502	\$24,850	\$0	\$7,032,502
California	425	\$2,671,026	\$6,285	\$1,211,385	\$3,882,411
Colorado	496	\$1,943,245	\$3,918	\$1,179,889	\$3,123,134

<sup>20</sup> U.S. Government Accountability Office, *Federal Land Management: Federal Land Transaction Facilitation Act Restrictions and Management Weaknesses Limit Future Sales and Acquisitions*, GAO-08-196, February 5, 2008, <http://www.gao.gov/new.items/d08196.pdf>. Hereinafter cited as “2008 GAO Report.” For the list of GAO recommendations related to FLTFA, see the GAO website at <http://www.gao.gov/products/GAO-08-196#recommendations>. For information on agency actions related to the recommendations, see U.S. Government Accountability Office, *Federal Land Management: Challenges to Implementing the Federal Land Transaction Facilitation Act*, GAO-10-259T, November 17, 2009, at <http://www.gao.gov/new.items/d10259t.pdf>, p. 9-10. Hereinafter cited as “2009 GAO Testimony.”

<sup>21</sup> 43 U.S.C. §1716.

<sup>22</sup> This figure includes Alaska, where 0.1 acres were sold.

	BLM Acres Sold	Receipts from BLM Land Sales	Ave. \$ per Acre Sold	Receipts from Cash Equalization Payments	Total Receipts
Eastern States	1	\$21,000	\$21,000	\$0	\$21,000
Idaho	1,729	\$2,412,043	\$1,395	\$298,283	\$2,710,326
Montana	682	\$135,025	\$198	\$449,191	\$584,216
Nevada	11,717	\$79,487,135	\$6,784	\$8,608,345	\$88,095,480
New Mexico	901	\$6,325,350	\$7,020	\$310,981	\$6,636,331
Oregon	8,562	\$1,701,139	\$199	\$0	\$1,701,139
South Dakota	0	0	n/a	\$47,051	\$47,051
Utah	76	\$237,390	\$3,124	\$79,602	\$316,992
Washington	0	0	n/a	\$297,790	\$297,790
Wyoming	1,095	\$1,194,566	\$1,091	\$10,000	\$1,204,566
Total	25,967	\$103,166,721	\$3,973	\$12,492,517	\$115,659,237

**Source:** Figures in this table were provided by BLM on May 19, 2011, and reflect activity through September 30, 2010 (FY2010).

**Notes:** Figures in columns 1-3 reflect BLM sale of land under FLTFA. They do not reflect the exchange of land under FLTFA, as land exchanges are not correlated on an acreage basis. Column 4 reflects receipts from cash equalization payments for the exchange of lands under FLTFA. Column 5 represents total receipts under FLTFA, derived from land sales and land exchanges (cash equalization payments). Totals may not add due to rounding. Also, n/a indicates not applicable.

a. Receipts are from the sale of 0.1 acres of land, which rounds to 0.

The average price per acre sold varied considerably among the states, from a low of \$198 per acre in Montana to a high of \$24,850 per acre in Arizona. The average price of all 25,967 acres sold was \$3,973. It would likely be problematic to make more general comparisons about the value of lands among the states, or to generalize about the value of all BLM landholdings based on this data. This is because the total acreage sold under FLTFA is likely to be too small to be representative of lands within a state or of all BLM lands. In fact, the total acreage sold under FLTFA was 0.01% of the 247.5 million acres managed by BLM.<sup>23</sup> The parcels sold are unlikely to be representative of the variety of lands in each state and throughout the West, in terms of natural resources, development potential, location, and other variables.

Most of the revenues from both land sales and exchanges came from Nevada—\$88.1 million (76%). Nevada has generated the most revenue due to the large BLM holdings in areas of population growth, the high demand for such land to develop, and the experience of BLM with selling land in Nevada under another land sale program.<sup>24</sup> Another 6% of the revenues from land sales and exchanges were generated in each of Arizona and New Mexico, while 3% of the revenues were derived from sales and exchanges in each of California and Colorado. Nine other states collectively accounted for 6% of the total receipts.

<sup>23</sup> This figure is current as of September 30, 2011.

<sup>24</sup> Under the Southern Nevada Public Land Management Act, the Secretary of the Interior, through the BLM, is authorized to sell or exchange certain land around Las Vegas. Revenues from these land sales totaled \$3.35 billion as of September 30, 2012, significantly larger than had been expected.

## Acreage Acquired and Expenditures on Acquisitions

The acquisition of lands and expenditures on acquisitions were less concentrated among states than land sales and receipts. Lands were acquired in 10 states, with about a quarter of the acreage acquired in each of two states—California (28%) and Colorado (26%). Acquisitions in Idaho accounted for another 18% of the total acreage, while acquisitions in New Mexico and Montana accounted for 14% and 7%, respectively. The other five states collectively accounted for 8% of the acreage acquired.<sup>25</sup> (See **Table 2**.)

The \$49.2 million in expenditure of FLTFA funds was dispersed among the 10 states. While expenditures ranged from a high of 38% in Nevada to a low of 1% in Utah, six states each had between 11% and 7% of total expenditures. These states were Idaho (11%), Arizona (10%), California (9%), New Mexico (8%), Wyoming (8%), and Colorado (7%). An additional \$9.7 million of non-FLTFA funds was used to help pay for parcels acquired with FLTFA funding, which comprised 17% of the total funding for these parcels (\$58.9 million).

The average price per acre acquired by BLM varied more widely among the states than the average price per acre sold. The price per acre acquired (including non-FLTFA funds) ranged from a low of \$763 per acre in Colorado to a high of \$88,878 in Nevada. The average price of all 18,135 acres acquired was \$3,250. As in the case of sale data, the acquisition data are too limited a sample to allow for generalizations about the value of all nonfederal lands within a state or throughout the West. Like federal lands, nonfederal lands exhibit great variety in resources and attributes, commercial use potential, and location, among other factors.

**Table 2. Land Acquisitions Under FLTFA, FY2000-FY2010**

	<b>Acres Acquired</b>	<b>FLTFA Expenditures on Acres Acquired</b>	<b>Other Expenditures on Acres Acquired</b>	<b>Total Expenditures on Acres Acquired</b>	<b>Ave. \$ per Acre Acquired</b>
Alaska <sup>a</sup>	0	\$0	\$0	\$0	n/a
Arizona	685	\$4,945,000	\$2,120,000	\$7,065,000	\$10,314
California	5,086	\$4,392,933	\$740,000	\$5,132,933	\$1,009
Colorado	4,648	\$3,548,000	\$0	\$3,548,000	\$763
Eastern States <sup>a</sup>	0	\$0	\$0	\$0	n/a
Idaho	3,318	\$5,448,552	\$1,982,008	\$7,430,560	\$2,239
Montana	1,232	\$2,125,878	\$3,122,386	\$5,248,264	\$4,260
Nevada	210	\$18,664,401	\$0	\$18,664,401	\$88,878
New Mexico	2,468	\$3,970,202	\$208,347	\$4,178,549	\$1,693
Oregon	159	\$1,683,992	\$265,000	\$1,948,992	\$12,258
Utah	10	\$580,000	\$220,000	\$800,000	\$80,000
Wyoming	317	\$3,852,250	\$1,070,000	\$4,922,250	\$15,528

<sup>25</sup> Areas with completed acquisitions under FLTFA, as of March 29, 2011, are identified by agency and state on the BLM website at [http://www.blm.gov/wo/st/en/prog/more/lands/land\\_tenure/purchase.html](http://www.blm.gov/wo/st/en/prog/more/lands/land_tenure/purchase.html). In addition, on July 28, 2011, BLM completed the purchase of a 400-acre parcel at the Johnson Canyon Area of Critical Environmental Concern in California, with \$1.2 million in FLTFA funding, according to BLM.

	Acres Acquired	FLTFA Expenditures on Acres Acquired	Other Expenditures on Acres Acquired	Total Expenditures on Acres Acquired	Ave. \$ per Acre Acquired
Total	18,135	\$49,211,208	\$9,727,741	\$58,938,949	\$3,250

**Source:** Figures in this table were provided by BLM on May 19, 2011, and reflect activity through September 30, 2010 (FY2010).

**Notes:** Figures in columns 1-3 reflect BLM sale of land under FLTFA. They do not reflect the exchange of land under FLTFA, as land exchanges are not correlated on an acreage basis. Column 4 reflects receipts from cash equalization payments for the exchange of lands under FLTFA. Column 5 represents total receipts under FLTFA, derived from land sales and land exchanges (cash equalization payments). Totals may not add due to rounding. Also, n/a indicates not applicable.

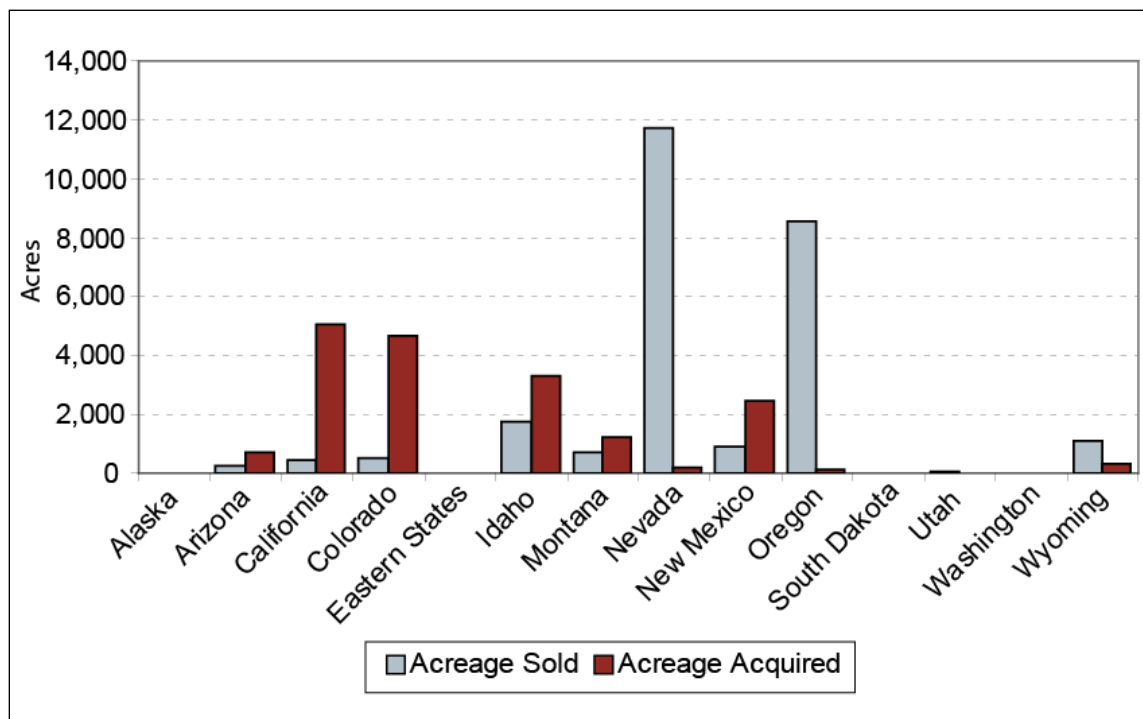
- a. While a small amount of land was sold in Alaska and the Eastern States, no land was acquired in these states.

## Acreage Sold and Acquired, and Receipts and Expenditures, by State

The data on activity under FLTFA is depicted by state in the bar graphs below. **Figure 2** depicts the acreage sold and acquired within each state from the enactment of FLTFA through FY2010. In the two states with the preponderance of the land sales, Nevada and Oregon, the acreage sold vastly exceeded the acreage acquired. Two other states sold more land than they acquired—Utah and Wyoming. In Utah, both sales and acquisitions were small (76 acres and 10 acres, respectively), while in Wyoming the acreage sold (1,095) was more than three times the acreage acquired (317 acres).

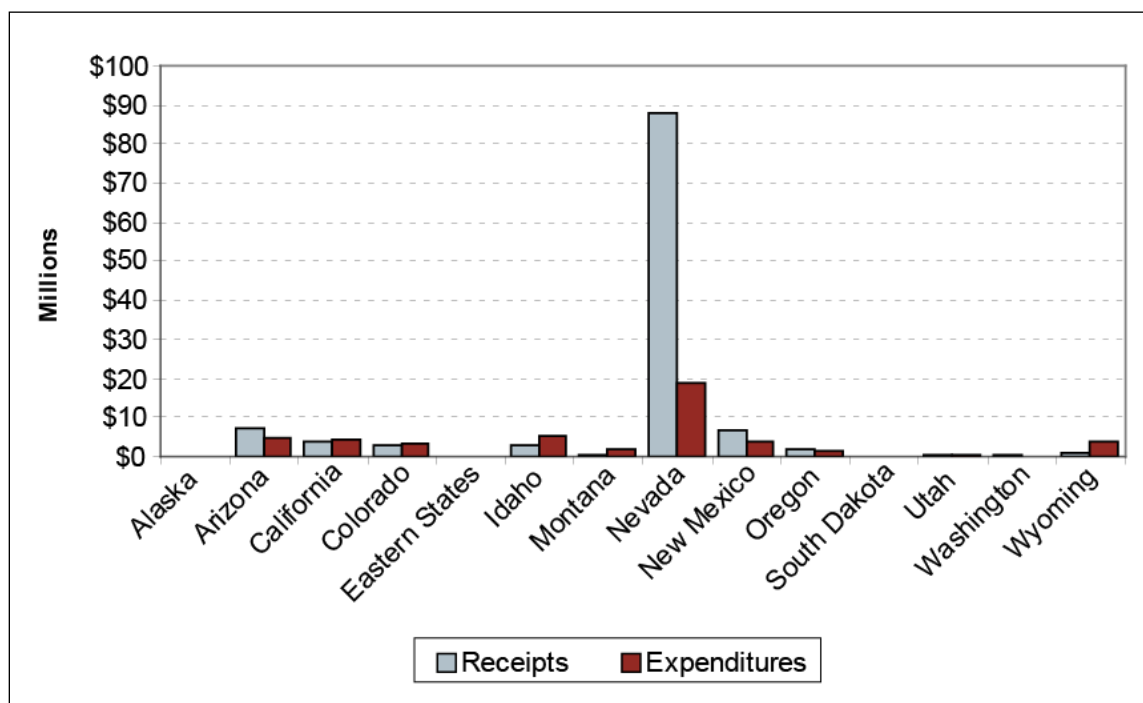
By contrast, several states acquired more land than they sold, namely, Arizona, California, Colorado, Idaho, Montana, and New Mexico. The largest differences occurred in California and Colorado; California acquired 12 times the amount of land sold, while Colorado acquired 9 times the amount sold. Many factors might have influenced the extent to which land was acquired within each state, including whether the land was an inholding or an edgeholding, whether there was a willing seller, the cost of the land, and the land's natural resources and other attributes.

**Figure 2. Comparison of Acres Sold and Acquired Under FLTFA, by State, FY2000-FY2010**



Source: Created by CRS, using data provided by BLM on May 19, 2011.

**Figure 3. Comparison of Receipts and Expenditures Under FLTFA, by State, FY2000-FY2010**



Source: Created by CRS, using data provided by BLM on May 19, 2011.

**Figure 3** depicts the receipts and expenditures within each state from enactment of FLTFA through FY2010. It shows that Nevada had by far the highest amount of both receipts and expenditures, although the receipts from land sales vastly exceeded expenditures on acquisitions. This is likely due to the large BLM land holdings in Nevada and the relative ease in selling these lands for community growth and development and other purposes. Three other states had higher receipts than expenditures, namely, Arizona, New Mexico, and Oregon.

Six states had higher expenditures than receipts. In some cases the difference was small, as in California, which had \$3.1 million in receipts and \$3.5 million in expenditures. In other cases the difference was greater. In Montana and Wyoming, for instance, expenditures were more than triple receipts. States can have higher expenditures than receipts because up to 20% of the funds for acquisition can be used in any state. In this way, a portion of the large collections in Nevada, for instance, could be used to purchase land in other states.

## Administrative and Legislative Action

The Obama Administration's FY2013 budget proposed making FLTFA permanent and using current land management plans for determining which lands to sell or exchange. The Administration also testified in the 112<sup>th</sup> Congress in support of reauthorizing FLTFA. In one such testimony, the Administration asserted that FLTFA has been a "critical tool for enhancing our Nation's treasured landscapes," and further stated that there are difficulties with relying on land exchanges under other BLM authorities, that using current land use plans as the basis for sales would foster land disposals, and that important acquisitions have been made under FLTFA.<sup>26</sup> The George W. Bush Administration also supported using updated land management plans for determining which lands to sell or exchange, and proposed extending FLTFA for about 10 years.<sup>27</sup>

In the 112<sup>th</sup> Congress, legislation to amend FLTFA has been introduced in both chambers. S. 3525, S. 714, and H.R. 3365 contain provisions to extend the authority to sell or exchange BLM lands under FLTFA, although the length of the extension varies among the measures. S. 3525 would extend the authority for 11 years (from July 25, 2011, until July 25, 2022), S. 714 would extend it for 10 years (until July 25, 2021), and H.R. 3365 would extend it for 7 years (until July 25, 2018). In other respects the bills are identical. They would remove the provision that terminates the FLTFA account should the authority to sell and exchange lands expire. This would allow funds in the account to continue to be used for acquisitions. They also would allow for updated land management plans to be used as the basis for identifying lands for sale and exchange. Specifically, they call for use of plans in effect as of the date of enactment of the measures. Further, the bills would allow for acquisition of lands within or adjacent to federally designated areas regardless of when they were established.

On November 26, 2012, S. 3525 was considered on the Senate floor. However, it was returned to the Senate calendar after a point of order against an amendment in the nature of a substitute was sustained and the amendment was ruled out of order. The Senate majority leader sought and received unanimous consent to resume consideration of S. 3525 at a future time. S. 714 was

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<sup>26</sup> Mike Pool, Deputy Director, Bureau of Land Management, *Legislative Hearing on H.R. 1103, H.R. 3100, H.R. 4400, H.R. 3365, and S. 270*, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, May 17, 2012, at <http://naturalresources.house.gov/uploadedfiles/pooltestimony05.17.12.pdf>.

<sup>27</sup> The Bush Administration's FY2009 budget request contained this proposal, with an extension of FLTFA until January 1, 2018.

placed on the Senate calendar on September 6, 2011, and a House subcommittee held a hearing on H.R. 3365 on May 17, 2012.

Legislation pertaining to FLTFA also was introduced in the 111<sup>th</sup> Congress, but was not enacted. Among the measures,<sup>28</sup> H.R. 6206 and S. 3762 had proposed to reinstate the monies that were in the FLTFA account when the law expired on July 25, 2010. Both measures specified that the balance in the FLTFA account as of July 24, 2010, was to be reinstated, and available until expended, for the purposes covered by the FLTFA law.

## Issues

Several issues concerning whether to extend or make FLTFA permanent have been under debate. One issue is the extent to which there is a need for this authority in the context of other laws authorizing the sale and acquisition of federal land and other sources of funding for these purposes. A second issue is whether any extension of FLTFA should be relatively short (e.g., one year) or relatively long (e.g., 10 years or more). A third issue is whether to require land use plans as of July 25, 2000, to continue to be used as the basis of land sales. A fourth set of issues relates to the retention and use of proceeds, including the extent to which any future proceeds should be retained by the agencies, used exclusively for land sales and acquisitions, and used primarily in the state in which they were generated, and whether previously generated proceeds should be returned to the FLTFA fund.

## Need for FLTFA

The expiration of FLTFA does not bar BLM from selling or exchanging land identified for disposal, because BLM has authority to dispose of lands under FLPMA and other laws.<sup>29</sup> Further, the expiration of FLTFA does not preclude BLM, FWS, NPS, and FS from acquiring land, because the agencies have authorities (of varying breadth) to acquire nonfederal lands.<sup>30</sup> Thus, an issue for Congress is the extent to which FLTFA provides a more efficient mechanism for the government to sell and purchase lands.

In enacting FLTFA, Congress asserted that “a more expeditious process for disposal and acquisition of land, established to facilitate a more effective configuration of land ownership patterns, would benefit the public interest.”<sup>31</sup> To establish a “more expeditious process” for disposing and acquiring land, FLTFA provided that the proceeds of BLM land sales would be retained by the agencies for subsequent land acquisitions. The expiration of FLTFA prevents the proceeds of sales from being retained. Allowing the agencies to keep the proceeds was intended to provide incentive to BLM to sell land that had been identified for disposal. It was also intended to provide a permanent, reliable source of funding for important acquisitions, rather than have such acquisitions depend primarily on the variability of the annual appropriations process. For these reasons, Congress may reinstate this permanent source of funding for land acquisitions. Alternatively, Congress may continue to centralize decision-making on acquisition funding in the annual appropriations process. Annual appropriations for programs are often regarded as

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<sup>28</sup> Additional 111<sup>th</sup> Congress measures included S. 1787 and H.R. 3339.

<sup>29</sup> Provisions on sales under FLPMA are contained in 43 U.S.C. §1713(a), while provisions on exchanges under FLPMA are in 43 U.S.C. §§1715-1716. For information on BLM authorities to dispose of land, see CRS Report RL34273, *Federal Land Ownership: Current Acquisition and Disposal Authorities*.

<sup>30</sup> For information on the authorities of the four agencies to acquire lands, also see CRS Report RL34273, *Federal Land Ownership: Current Acquisition and Disposal Authorities*.

<sup>31</sup> 43 U.S.C. §2301(6).



opportunities to target funding levels to changing needs and circumstances, and to conduct program oversight and evaluation.

The extent to which FLTFA has fostered land sales and acquisitions is not clear from publicly available data. Consistent data on the number, acreage, and value of agency sales and acquisitions in the decade before and after the enactment of FLTFA are not readily available. Further, it is unclear to what extent sales and acquisitions under other standing authorities, or individually enacted laws of Congress, would have occurred since 2000 if FLTFA had not been enacted.

Challenges to selling and acquiring land could arise independent of FLTFA, since FLTFA did not change the general land sale and acquisition processes. For instance, land sales and acquisitions are typically voluntary, unless specifically directed by Congress. Some of the BLM land for sale is in relatively low-value markets where the sales would not be expected to raise significant funding, or in some cases even to cover the administrative costs of the sales. This could create a disincentive to selling these lands. Further, there may not be much demand for some of the BLM lands available for sale, and BLM does not typically market land for sale in the absence of expressed interest. Also, BLM is required by law to sell land for at least fair market value, and may have difficulty finding buyers willing to pay market value.

In 2008, GAO determined that BLM had not made sale of land under FLTFA a priority, and that few parcels had been purchased with FLTFA funds. The agency cited several challenges to the sale and acquisition of land under FLTFA. GAO noted a limited availability of knowledgeable realty staff, given the focus of realty staff on other agency priorities (e.g., processing rights-of-way for energy purposes). Other obstacles included the lack of sales goals or a sales implementation strategy, and weaknesses in developing a strategy for identifying and acquiring inholdings. Other factors, mentioned above, included the cost and complexity of acquisitions, difficulty in finding willing sellers, insufficient funding for some states, and public opposition. BLM has taken steps to address GAO recommendations on setting goals for land sales, developing a strategy for implementing sales goals, and identifying and setting priorities for acquiring inholdings.<sup>32</sup>

Another issue is whether sufficient funding for land sales and acquisitions exists without the revenues derived from FLTFA. The amount of funding for BLM land sales is not readily available, because appropriations for this particular purpose are not typically specified in appropriations laws or agency budget justification materials.<sup>33</sup> By contrast, each year, each of the four federal land management agencies receives a specified appropriation for land acquisition, primarily derived from the LWCF and provided through annual laws appropriating funds for Interior, Environment, and Related Agencies.<sup>34</sup> Over the past decade (FY2003-FY2012), appropriations from LWCF for the four agencies have ranged from a low of \$119.2 million for FY2006 to a high of \$316.0 million for FY2003. Appropriations for land acquisition for the most recent fiscal year, FY2012, were \$199.2 million. The portion for each of the four agencies has

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<sup>32</sup> For more information, see the 2008 GAO Report and the 2009 GAO Testimony.

<sup>33</sup> For instance, in FY2012, \$32.6 million was appropriated to BLM for land and realty management. The land and realty management program grants rights-of-way and other use authorizations for BLM lands, and conducts land sales, exchanges, and withdrawals. The portion of the appropriation for land sales is not specified. For a further description of this program and its funding, See U.S. Dept. of the Interior, Bureau of Land Management, *Budget Justifications and Performance Information, Fiscal Year 2013*, pp. VIII-151-154.

<sup>34</sup> Of the four agencies, only the FWS has another significant source of funding. Under the Migratory Bird Conservation Fund, the FWS has a permanently appropriated source of funding for land acquisition.

varied considerably.<sup>35</sup> It is not clear whether different levels of appropriations from LWCF might have been provided if FLTFA funding were not available for acquisitions.

## Length of Extension

Another short-term extension of FLTFA could provide additional time to assess whether there is a long-term need for FLTFA relative to other sale and acquisition authorities. A short-term extension also could be used if Congress had specific sale and acquisition goals to be achieved under FLTFA, such as the sale of a particular amount of land. If this were the intent, Congress could allow the authority to expire or could repeal it when the acreage goals were reached. In general, shorter and more frequent program extensions could be viewed as fostering oversight and evaluation of the effectiveness of FLTFA, and opportunities to amend the law to address changing circumstances and problems that might arise.

A longer-term extension might facilitate the establishment of a more vigorous and stable sale and acquisition program. Land sales might occur slowly during the early years of any extension, due to a lack of sufficient funds for the up-front costs of administering sales. A longer-term extension might allow for the hiring of additional realty staff with some of the proceeds of sales. Further, the length and complexity of many sales and acquisitions could require a longer-term extension. GAO determined that the anticipated sunset of the original 10-year program and the uncertainty of renewal might have weakened the incentive to sell land. Further, GAO reported that the acquisition process can take 2½ to 3 years, given the need for the four agencies to coordinate on and approve of proposed acquisitions.

## Land Use Plans

The changing nature of land use plans has prompted interest in amending FLTFA to allow the most current land use plans to be used as the basis of land disposals. In 2001, BLM began a multiyear effort to develop new land use plans and to update existing ones to address changing circumstances, such as increased demand for energy resources. BLM estimates that, from the start of that effort, it has completed over 75 plan revisions and major plan amendments. Further, as of May 2012, the agency was working on an additional 48 management plans, which were expected to be completed by 2016.<sup>36</sup>

The use of plans in effect as of enactment of FLTFA does not keep BLM from selling land identified for disposal in plans after that date, but prevents BLM from keeping the proceeds of such sales. The FLTFA sales authority was not tied to future land use plans due to concerns that BLM might revise plans to pursue a broad land disposal program as a way to generate funds. BLM asserts that its authorities to dispose of public lands would preclude this. Under FLPMA, for example, BLM is authorized to sell certain tracts of land only if they meet specified criteria. The agency also has asserted that land use plan revisions since 2000 have not changed significantly the acreage identified for disposal. Further, GAO concluded in its 2008 report that,

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<sup>35</sup> For more information on the Land and Water Conservation Fund, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by Carol Hardy Vincent and CRS Report R42525, *Interior, Environment, and Related Agencies: FY2013 Appropriations*, coordinated by Carol Hardy Vincent.

<sup>36</sup> Mike Pool, Deputy Director, Bureau of Land Management, *Legislative Hearing on H.R. 1103, H.R. 3100, H.R. 4400, H.R. 3365, and S. 270*, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, May 17, 2012, p. 3, at <http://naturalresources.house.gov/uploadedfiles/pooltestimony05.17.12.pdf>.

while BLM land use plans identified areas for disposal, BLM had not made sale of lands under FLTFA a priority.<sup>37</sup>

## **Retention and Allocation of Proceeds**

Several issues arise regarding the allocation of proceeds of land sales. One question has been whether to continue to allow 96% of the proceeds to be retained by the agencies, or whether to direct some portion of these receipts to the general fund of the Treasury. Under a proposal in the FY2009 George W. Bush Administration budget, for instance, 70% of the net proceeds would have been deposited in the general fund of the Treasury. The proposal was promoted to reduce the federal deficit, to ensure that the public would benefit from land sales, and to reduce the amount of money not subject to oversight during the appropriations process. However, such a change would reduce funds for acquisition of priority areas. Funding from the primary acquisition source—the Land and Water Conservation Fund—has varied widely over the past decade and remains uncertain.

A related question is whether some of the proceeds from land sales should be used for other federal lands purposes. This idea was proposed by the George W. Bush Administration in several years. For instance, in 2004 the Bush Administration had sought to dedicate 20% of the funds in the FLTFA fund to conservation projects on federal lands, to include habitat restoration, rehabilitation, and improvement.

Another issue regarding the allocation of proceeds is whether to retain the requirement that most of the funds for land acquisition be used in the state where the funds were generated. GAO concluded in 2008 that this requirement has made it difficult to acquire priority lands in states that sell relatively little land. As mentioned above, 76% of the revenues raised through FY2010—\$88.1 million—came from land sales in Nevada. However, retention of funds within a state could foster stability of landownership in those states.

Still another focus is on whether to reinstate the estimated \$52 million in proceeds that were in the FLTFA fund when the law initially expired and the \$2 million in proceeds that were in the fund at the end of the one-year extension. BLM had intended to use a sizeable portion of the monies to sell lands under the law, and the agencies would resume the acquisition of priority inholdings and edgeholdings with these funds. The \$54 million in total funds was to become available for appropriation under the LWCF when FLTFA expired. It is uncertain whether these funds will be appropriated, whether in addition to or in lieu of traditional LWCF appropriations. Under current law, the LWCF accumulates \$900.0 million in revenues, primarily from offshore oil and gas development. Historically, Congress has appropriated this level of funding only twice, and on average typically appropriates less than half of the annual revenues. Another option could be to redirect these revenues to another specific government program or activity or to the general fund of the Treasury.

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<sup>37</sup> 2008 GAO Report.

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